

Bruce A Timmons  
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The Honorable Graham Filler, Chair, House Committee on Judiciary  
Members of the House Committee on Judiciary

Statement Regarding

**HB 4153** (Mueller) – Traffic control: driver license; modify penalties for driving on suspended license. Amends MCL 257.317, 257.904 & 245.907.

Unable to learn if there would be a substitute for HB 4153, I am submitting this statement on the basis of the bill as introduced and the drafting concerns that I have with respect to that version of the bill. I take no position regarding the substantive content or purpose of the bill.

Each of the MCL sections being amended by this bill was amended late in 2020 and **HB 4153** does not incorporate any of the changes made by those recent statutes:

MCL 257.317 was amended by 2020 PA 376 (EHB 5846), eff 10/1/21.

MCL 257.904 was amended by 2020 PA 383 (EHB 5854), eff 3/24/21.

MCL 257.907 was amended by 2020 PA 382 (EHB 5853), eff 10/1/21.

Passage of HB 4153 without correction would nullify the 2020 PA amendments to each section, If it is assumed incorrectly that the 2020 PAs will kick in later, they would nullify HB 4153.

Other Drafting Issues in HB 4153 as introduced:

- **HB 4153** has no effective date.
- The provision stating a civil fine for violation of Sec. **312a(4)(a)**, page 12, lines 11-13, as not exceeding \$250, with a delayed date of October 1, 2021, is already included in 2020 PA 382 – same reference, same fine, same date. MCL 257.907(2)(d) per 2020 PA 382. Why?
- The Enacting Clause on page 16, lines 24-25 fails to include a bill number (presumably HB 5155). Passage of a bill without a bill number in a tiebar is against the House Rules.

If a substitute has not been requested to correct the issues raised above, there would also be the opportunity to correct multiple errors that **HB 5853, 2020 PA 382**, as enacted contained – to repeat an old adage of mine, if it is worth doing, it is worth doing right:

**A.** Since most traffic violations were decriminalized to “civil infractions” on August 1, 1979, per 1978 PA 510, and in the intervening 41 years, imposition of the civil fine has been **totally discretionary** from **\$0** to \$100 under Sec. 907(2). You can see that now in HB 4153, page 10, lines 24-26: “the judge or district court magistrate **may** order the person to pay a civil fine of **not more than \$100.00** and costs as provided in subsection (4).”.(Emphasis added.)

That was the original and only provision for civil infractions until numerous violations over the years have allowed a higher civil fine – and 2020 PA 382 did an admirable job organizing those exceptions in Sec. 907(2), which is not duplicated in HB 4153.

But now under 2020 PA 382, MCL 257.**907(2)(A)** would provide for the default civil fine for traffic civil infractions to be ordered this way: “the person **shall be ordered** to pay a civil fine of not more than \$100.00”. (Emphasis added.) Why was that change made? Policy change or drafting error?

Is that phrase in reality discretionary anyway with no minimum stated, or is it intended to pressure Judges and Magistrates to impose a civil fine where they might not be doing so now? If the former, it is a false “shall” and should be amended to say what it really means: “**may**”. If the latter, be honest about the intention – which would be highly ironic given one of the

key objectives of last year's bills was to enhance judicial discretion. As it now stands, the current phrase is one of the most unusual and inappropriate phrases in Michigan statutes – hopefully an inadvertence that can wisely be corrected before that phrase takes effect.

I would therefore recommend striking “shall” and inserting “may” in Sec. 907(2)(A).

[Note: A search of the Michigan Vehicle Code prior to 2020 PA 382 showed not a single instance of the use of the phrase “shall be ordered to pay not more than”. In fact, a search of the entire MCL database did not reveal a single phrase like that.]

**B.** There are two Vehicle Code sections with flat civil fines that are **MISSING** from **Sec. 907(2)** in 2020 PA 382 and, to be correct, should be added to be consistent with including all exceptions to the default civil fine in Sec. 907(2):

Sec. 252a(1): “(1) A person shall not abandon a vehicle in this state. It is presumed that the last titled owner of the vehicle is responsible for abandoning the vehicle unless the person provides a record of the sale as that term is defined in section 240. A person who violates this subsection and who fails to redeem the vehicle before disposition of the vehicle under section 252g is responsible for a civil infraction and **shall be ordered to pay a civil fine of \$50.00.**”.

Sec. 653a(2): “(2) Except as provided in this subsection and subsections (3) and (4), a person who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both. Beginning 60 days after the effective date of the amendatory act that amended this subsection, except as provided in subsections (3) and (4), a person who violates this section is responsible for a civil infraction and **shall be ordered to pay a civil fine of \$400.00.**”.

**C.** There is an aberration, if not ambiguity, with regard to Sec. 602b in **Sec. 907(2)(h)** [2020 PA 382] (and worse):

Sec. 602b(6) provides:

“(6) An individual who violates this section is responsible for a civil infraction and shall be ordered to pay a civil fine as follows:

(a) For a first violation, \$100.00.

(b) For a second or subsequent violation, \$200.00.”.

Those are flat civil fines. Those flat civil fines are now mimicked in Sec. 907(2) [see HB 4153, page 11, lines 2-5]. But in 2020 PA 382, Sec. 907(2)(h) provides that the civil fine for a first violation “must not be more than \$100.00” (implying or allowing discretion in contradiction to Sec. 602b(6)). Then it states “\$200” for a second or subsequent “offense”. Is that intended as an implied ‘not more than’ or a flat civil fine – that seems ambiguous. Which “law” does the Legislature want the court to follow – flat or discretion? Clarifying the civil fines in Sec. 907(2)(h) for a flat civil fine for first and subsequent would eliminate the ambiguity and be four-square with the civil fines specified in Sec. 602b(6).

**D.** There is yet another drafting problem in **Sec. 907(2)(h)** [2020 PA 382]: For 41 years we have intentionally not referred to civil infraction violations as “**offenses**”. That term is the typical jargon for criminal violations, not civil. The Legislature has tried as much as possible to not mix criminal and civil terminology lest it be argued that CI’s are just another form of crime. Therefore, to continue that consistency, two different changes are required to be accurate:

MCL 257.602b(6) itself uses the term “violation” (noted above). The current law references in **Sec. 907(2)**, [see HB 4153, page 11, lines 4-5], are wrong. There is no other similar misuse of “offense” in Sec. 907.

Therefore, In **Sec. 907(2)(h)**, [2020 PA 382] “**offense**” should be replaced by “**violation**” in both places – to be consistent with Sec. 602b(6) itself and long-standing avoidance of “offense” for civil infractions.

E. Since **HB 4153** is a multi-section bill amending the Vehicle Code, perhaps this would be a convenient opportunity to amend three sections necessary to **eliminate driver license suspensions** for failure to appear or pay fines and costs for traffic civil infractions citations, but **overlooked** in HB 5846, 2020 PA 376, those being as follows:

**MCL 257.743** Contents of citation issued pursuant to MCL 257.742; timely appearance.

Sec. 743. (1) A citation issued pursuant to section 742 shall contain the name of the state or political subdivision acting as plaintiff, the name and address of the person to whom the citation is issued, the civil infraction alleged, the place where the person shall appear in court, the telephone number of the court, the time at or by which the appearance shall be made, and the additional information required by this section.

(2) The citation shall inform the defendant to the effect that he or she, at or by the time specified for appearance, may:

(a) Admit responsibility for the civil infraction in person, by representation, or by mail.

(b) Admit responsibility for the civil infraction "with explanation" in person, by representation, or by mail.

(c) Deny responsibility for the civil infraction by doing either of the following:

(i) Appearing in person for an informal hearing before a district court magistrate or a judge without the opportunity of being represented by an attorney.

(ii) Appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

(3) The citation shall inform the defendant that if the person desires to admit responsibility "with explanation" other than by mail or to have an informal hearing or a formal hearing, the person must apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation.

(4) The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment against the person **and in the immediate suspension of the person's operator's or chauffeur's license**. Timely application to the court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitute a timely appearance.

(5) If the citation is issued to a person who is operating a commercial motor vehicle, the citation shall contain a vehicle group designation and indorsement description of the vehicle, which vehicle is operated by the person at the time of the alleged civil infraction.

**MCL 257.744** Admissions or denials; sworn complaint; warrant for arrest.

Sec. 744. If an officer issues a citation under section 742 for a civil infraction or if a citation is issued under section 742 for a parking or standing violation, the court may accept an admission with explanation or an admission or denial of responsibility upon the citation without the necessity of a sworn complaint. If the person denies responsibility for the civil infraction, further proceedings shall not be had until a sworn complaint is filed with the court. **A warrant for arrest under section 321a for failure to appear on the civil infraction citation shall not issue** until a sworn complaint relative to the civil infraction is filed with the court.

**MCL 257.748** Default judgment; suspension of license.

Sec. 748. If the person to whom a citation is issued for a civil infraction fails to appear as directed by the citation or other notice, at a scheduled appearance under section 745(3)(b) or (4), at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against that person and **the person's license shall be suspended pursuant**

**to section 321a until that person appears in court and all matters pertaining to the violation are resolved or until the default judgment is set aside.**

Thank you for giving these recommendations due consideration.

Respectfully,

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